

76-6837

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Supreme Court, U. S.
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AUG 8 1977
ROBERT J. CROYLE, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

May Term, 1977

No. **76-6837**

FLOYD EDWARDS

Petitioner

-VS-

THE STATE OF OHIO

Respondent

ADDENDUM TO RESPONDENT'S ANSWER

TO

PETITION FOR A WRIT OF CERTIORARI

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PETITIONER'S FIRST REASON FOR
GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THE OHIO CAPITAL PUNISHMENT STATUTES AND THE SENTENCE OF DEATH GIVEN TO PETITIONER VIOLATE THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

PART B

THE OHIO STATUTES VIOLATE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS BY PLACING THE BURDEN OF PROOF UPON HIM WITH RESPECT TO THE ISSUE OF DEGREE OF CULPABILITY AND RESULTING PUNISHMENT..

In State v. Downs, 51 Ohio St.2d 47 (1977), (copy attached), the Ohio Supreme Court overruled paragraphs 11 and 12 of the syllabus of State v. Lockett, 49 Ohio St.2d 48, 358 N.E.2d 1062 (1976), and the language which appears in State v. Woods, 48 Ohio St.2d 127 at 135, 357 N.E.2d 1059 at 1065 (1976), which reads: "(t)his is particularly true since the defendant is required to establish duress or coercion by a preponderance of the evidence for purposes of mitigation." The opinion stated at page 53 that the trial court did not in either case:

"(require the) defendant convicted of aggravated murder to prove certain mitigating circumstances by a preponderance of the evidence in order to be sentenced to life imprisonment rather than to death..."

The sections cited were held to be dicta.

The Ohio Supreme Court in the Downs case held that neither the defendant nor the prosecution is required by


statute to offer testimony or other evidence of mitigating circumstances. Rather, the court has the initial responsibility to require that certain evidence be collected and certain examinations be made. From a careful consideration of those reports and evidence presented during the course of the trial, the judge, or panel of judges, decides whether mitigation is established by a preponderance of the evidence. This requires that the defendant bear the risk of nonpersuasion during the mitigation hearing, but does not impose an unconstitutional burden upon a defendant which would render the Ohio statutory framework for the imposition of capital punishment unconstitutional. Thus the defendant need not produce any evidence in the mitigation hearing, but if the evidence presented does not persuade the Court that a mitigating factor is present the defendant bears the risk of not presenting any evidence in support of mitigation.

Nor is the State constitutionally required to prove the lack of such mitigating factors beyond a reasonable doubt. The lack of mitigating factors is not an additional and constitutionally mandated element of a capital offense.

The State submits that any possible infirmity or misunderstanding with respect to the burden of proof in the mitigation hearing provided in R.C. 2929.04 has now been put to rest by State v. Downs, supra.

CERTIFICATION OF SERVICE

I, CARL M. LAYMAN III, being a member of the bar of the United States Supreme Court, do hereby certify, pursuant to Supreme Court Rule 33(3)(b), that one copy of the Addendum to Respondent's Answer to Petition for a Writ of Certiorari was mailed, first class postage paid, to: ALBERT S. RAKAS, Attorney at Law, Appellate Review Office, School of Law, The University of Akron, Akron, Ohio 44325 and THEODORE CHUPARKOFF, Attorney at Law, 501 East Exchange Street, Akron, Ohio 44307.



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A P P E N D I X

Note: State v. Downs, 51 Ohio St.2d 47 (1977),
was of poor photographic quality and
not reproduced herein.